



Norman E. Garcia

July 5, 2017

Page 18

With regard to the "all facts" objection, Oracle is willing to compromise and define "all facts" to mean all material facts.

With regard to the response itself, if documents are referenced, the documents must be identified precisely. OFCCP does not do this. As an example, in the paragraph beginning "Subject to . . .," the response refers to documents "including, but not limited to. . . ." If the OFCCP is going to rely on documents, it must identify them with specificity, and identify them such that Oracle would know where in a document the information can be found. Fed. R. Civ. P. 33(d)(1); see also, e.g., *Palmdale3D, LLC v. Calamos*, 2015 U.S. LEXIS 187818, \*3 (C.D. Cal. June 24, 2015), *Reinsdorf v. Skechers, U.S.A., Inc.*, 2012 U.S. Dist. LEXIS 195218, \*8-9 (C.D. Cal. May 11, 2012). Because OFCCP indicates that those documents have been produced, it should identify the bates stamp number(s) where the information can be located.

The same is true of the documents identified by names. For example, OFCCP references a compensation database. It cannot be assumed that Oracle and OFCCP use the same nomenclature. As the database and other documents referenced have presumably been produced, there should be an attendant bates stamp number. Reference to that will ensure a lack of misunderstanding and confusion.

In addition, it is clear that OFCCP has not answered this interrogatory fully in other respects. For example, OFCCP claims to have "review[ed] evidence" to determine which roles were similar. Oracle is entitled to know the evidence that is referenced.

Finally, OFCCP incorporates by reference its response to Interrogatory Nos. 2, 12 and 14. Such references are improper. Each interrogatory response should stand on its own. *Former S'holders of Cardiospectra, Inc. v. Volcano Corp.*, 2013 U.S. Dist. LEXIS 144136, \*7-8 (N.D. Cal. Oct. 4, 2013).

#### ***Interrogatory No. 16***

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

Oracle is seeking by this interrogatory the statistical data and the analyses and methods used to arrive at the statistical results identified in the Amended Complaint. The data and the means used to arrive at it are not protected by the deliberative process privilege. It is a final agency decision. Moreover, OFCCP has relied on that statistical data to respond to the interrogatories that are the subject of this letter by incorporating into the responses the Amended Complaint and NOV as supportive of the claims alleged. Therefore, the request is timely and proper. See, e.g., *EEOC v. FAPS, Inc.*, 2012 U.S. Dist. LEXIS 65591, \*13-25 (D.N.J. May 10, 2012); *EEOC v. Peoplemark, Inc.*, 2010 U.S. Dist. LEXIS 17526, \*22-23 (W.D. Mich. 2010).



Norman E. Garcia  
July 5, 2017  
Page 19

To be sure, there may be additional statistical data developed and refined during and after discovery. However, the fact that there may be additional data in the future does not preclude the discovery of the information on which OFCCP relies as the factual basis for its allegations.

In addition, the interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP rely on some kind of unclean hands defense for refusing to respond. First, there is no such thing. *See, e.g., Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 85636 (a party may not refuse to provide discovery based on claims that opposing party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts support the claim. Third, if there is information that OFCCP does not possess, it should so state. And finally, in this regard, to the extent that something will be the subject of expert testimony, OFCCP is still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.

With regard to the "all facts" objection, Oracle is willing to compromise and define "all facts" to mean all material facts.

With regard to the response itself, if documents are referenced, the documents must be identified precisely. OFCCP does not do this. As an example, in the paragraph beginning "Subject to . . .," the response refers to documents "including, but not limited to. . ." If the OFCCP is going to rely on documents, it must identify them with specificity, and identify them such that Oracle would know where in a document the information can be found. Fed. R. Civ. P. 33(d)(1); *see also, e.g., Palmdale3D, LLC v. Calamos*, 2015 U.S. LEXIS 187818, \* 3 (C.D. Cal. June 24, 2015), *Reinsdorf v. Skechers, U.S.A., Inc.*, 2012 U.S. Dist. LEXIS 195218, \*8-9 (C.D. Cal. May 11, 2012). Because OFCCP indicates that those documents have been produced, it should identify the bates stamp number(s) where the information can be located.

The same is true of the documents identified by names. For example, OFCCP references a compensation database. It cannot be assumed that Oracle and OFCCP use the same nomenclature. As the database and other documents referenced have presumably been produced, there should be an attendant bates stamp number. Reference to that will ensure a lack of misunderstanding and confusion.

In addition, it is clear that OFCCP has not answered this interrogatory fully in other respects. For example, OFCCP claims to have "evaluated and analyzed Oracle's compensation information" without specification as to what that information is. Oracle is entitled to know.



Norman E. Garcia

July 5, 2017

Page 20

Finally, OFCCP incorporates by reference its response to Interrogatory Nos. 2, 12, 14 and 15. Such references are improper. Each interrogatory response should stand on its own. *Former S'holders of Cardiospectra, Inc. v. Volcano Corp.*, 2013 U.S. Dist. LEXIS 144136, \*7-8 (N.D. Cal. Oct. 4, 2013).

#### *Interrogatory No. 17*

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

We believe the objections are not well-taken. The interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP rely on some kind of unclean hands defense for refusing to respond. First, there is no such thing. See, e.g., *Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 85636 (a party may not refuse to provide discovery based on claims that opposing party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts support the claim. Third, if there is information that OFCCP does not possess, it should so state. And finally, in this regard, to the extent that something will be the subject of expert testimony, OFCCP is still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.

With regard to the "all facts" objection, Oracle is willing to compromise and define "all facts" to mean all material facts.

With regard to the response itself, if documents are referenced, the documents must be identified precisely. OFCCP does not do this. As examples, in the paragraph beginning "Subject to . . .," the response refers to documents "including, but not limited to. . . ." In the paragraph beginning with the word "Specifically," OFCCP references "documentation" and "documents related to" without specifying what those are. Indeed the reference to documents are additionally vague as OFCCP then hedges by stating that the documents reviewed are those that "may be relevant to a determination of whether Oracle complied with the requirements of the Executive Order, VEVRA, Section 503 and their implementing regulations, including but not limited to . . . ." If the OFCCP is going to rely on documents, it must identify them with specificity, and identify them such that Oracle would know where in a document the information can be found. Fed. R. Civ. P. 33(d)(1); see also, e.g., *Palmdale3D, LLC v. Calamos*, 2015 U.S. LEXIS 187818, \*3 (C.D. Cal. June 24, 2015), *Reinsdorf v. Skechers, U.S.A., Inc.*, 2012 U.S. Dist. LEXIS 195218, \*8-9 (C.D. Cal. May 11, 2012). Because OFCCP indicates that those documents have been produced, it should identify the bates stamp number(s) where the information can be located.

The same is true of the documents identified by names. For example, OFCCP references a hiring database. It cannot be assumed that Oracle and OFCCP use the same nomenclature. As the



Norman E. Garcia

July 5, 2017

Page 21

database and other documents referenced have presumably been produced, there should be an attendant bates stamp number. Reference to that will ensure a lack of misunderstanding and confusion.

In addition, it is clear that OFCCP has not answered this interrogatory fully in other respects. For example, OFCCP claims to have "evaluated and analyzed Oracle's recruiting and hiring information and evidence gathered in the investigation . . . ." Oracle is entitled to know the information and evidence that OFCCP relied on. The same is true of references to internal databases, information received from EEOC and the like. If that type of information is the basis for the allegations in Paragraph 10 of the Amended Complaint, the relevant information obtained should be disclosed. Other examples include, OFCCP references "anecdotal evidence" without detailing what it is and OFCCP's references to a longstanding and well-known preference of sponsoring H1B visas without specifying the basis for the assertion.

#### *Interrogatory No. 18*

Interrogatories of this nature are routine. Oracle seeks the name and last known contact information of each person with personal knowledge of the facts alleged in Paragraph 10 of the Amended Complaint and what facts OFCCP understands the person to have personal knowledge of. Such requests have withstood challenge. See, e.g., *King v. Wadkins*, 2017 U.S. Dist. LEXIS 95963, \*8 (E.D. Cal. June 21, 2017); *Silba v. AvalonBay Communities*, 2015 U.S. Dist. LEXIS 180517, \*19 (C.D. Cal. Oct. 2015); *Montgomery v. Wal-Mart Stores, Inc.*, 2015 U.S. Dist. LEXIS 188010, \*11-12 (S.D. Cal. July 2015).

For last known contact information there is no need whatsoever to interview thousands or indeed any employee or other individuals. If individuals identified by you in response to our discovery requests are current employees you need only state the name of the individual and whether you believe he/she is a current employee; if he/she is a former employee or a third party, you need only provide the name and location/employer and any business contact information you have; and if individuals you identify are known by OFCCP to be represented by counsel, provide the name of the individual and the name and contact information of their counsel. With regard to government employees (including former government employees), provided that OFCCP will agree that they can be contacted through the Office of the Solicitor, Oracle does not require contact information.

With regard to the "all facts" objection, Oracle is willing to compromise and define "all facts" to mean all material facts.

OFCCP is not relieved of its burden to respond by claiming that OFCCP would need to interview thousands of Oracle employees. Likewise, the objection that the interrogatory calls for speculation until such time as Oracle makes everyone available to OFCCP is not tenable. OFCCP is required to make reasonable efforts to respond to an interrogatory. See, e.g., *Haney v. Saldana*, 2010 U.S. Dist. LEXIS



Norman E. Garcia  
July 5, 2017  
Page 22

93447, \*9 (E.D. Cal. Aug. 24, 2010). While the parties may ultimately disagree on what is reasonable, this objection does not excuse OFCCP from responding to this interrogatory.

This interrogatory cannot be counted as two. Courts have counted as one interrogatory those that request the names of persons, including the nature of the information possessed by the persons identified. See, e.g., *Johnson v. Cate*, 2014 U.S. Dist. LEXIS 119864, \*22 (E.D. Cal. Aug. 27, 2014).

With regard to the response, it is inadequate for the same reasons that the response to Interrogatory No. 1 is inadequate.

#### *Interrogatory No. 19*

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

We believe the objections are not well-taken. The interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP rely on some kind of unclean hands defense for refusing to respond. First, there is no such thing. See, e.g., *Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 85636 (a party may not refuse to provide discovery based on claims that opposing party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts support the claim. Third, if there is information that OFCCP does not possess, it should so state. And finally, in this regard, to the extent that something will be the subject of expert testimony, OFCCP is still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.

OFCCP objects to the words "equally or better qualified" and "person's stead" as ambiguous and vague. Paragraph 10 of OFCCP's Amended Complaint uses the term "qualified" in describing the alleged victims hiring discrimination. So OFCCP's claims that it does not understand the meaning of the term does not make sense. What Oracle seeks is the identity of persons not hired who were as qualified or more qualified than those hired. If OFCCP does not believe those not hired were as qualified or more qualified, it can so state. As to what may constitute "equally or better qualified," presumably OFCCP understands what it believes made someone as qualified or more qualified such that Oracle discriminated in its decision not to hire.

With regard to the response itself, if documents are referenced, the documents must be identified precisely. OFCCP does not do this. As an example, in the paragraph beginning "Subject to . . .," the response refers to documents "including, but not limited to. . . ." If the OFCCP is going to rely on documents, it must identify them with specificity, and identify them such that Oracle would know where in a document the information can be found. Fed. R. Civ. P. 33(d)(1); see also, e.g., *Palmdale3D, LLC v. Calamos*, 2015 U.S. LEXIS 187818, \* 3 (C.D. Cal. June 24, 2015), *Reinsdorf v. Skechers, U.S.A., Inc.*,



Norman E. Garcia  
July 5, 2017  
Page 23

2012 U.S. Dist. LEXIS 195218, \*8-9 (C.D. Cal. May 11, 2012). Because OFCCP indicates that those documents have been produced, it should identify the bates stamp number(s) where the information can be located.

The same is true of the documents identified by names. For example, OFCCP references application materials. It cannot be assumed that Oracle and OFCCP use the same nomenclature. As the documents referenced have presumably been produced, there should be an attendant bates stamp number. Reference to that will ensure a lack of misunderstanding and confusion.

Finally, OFCCP incorporates by reference its response to Interrogatory No. 17. Such a reference is improper. Each interrogatory response should stand on its own. *Former S'holders of Cardiospectra, Inc. v. Volcano Corp.*, 2013 U.S. Dist. LEXIS 144136, \*7-8 (N.D. Cal. Oct. 4, 2013).

#### *Interrogatory No. 20*

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

Oracle is seeking by this interrogatory the statistical data and the analyses and methods used to arrive at the statistical results identified in the Amended Complaint. The data and the means used to arrive at it are not protected by the deliberative process privilege. It is a final agency decision. Moreover, OFCCP has relied on that statistical data to respond to the interrogatories that are the subject of this letter by incorporating into the responses the Amended Complaint and NOV as supportive of the claims alleged. Therefore, the request is timely and proper. See, e.g., *EEOC v. FAPS, Inc.*, 2012 U.S. Dist. LEXIS 65591, \*13-25 (D.N.J. May 10, 2012); *EEOC v. Peoplemark, Inc.*, 2010 U.S. Dist. LEXIS 17526, \*22-23 (W.D. Mich. 2010).

To be sure, there may be additional statistical data developed and refined during and after discovery. However, the fact that there may be additional data in the future does not preclude the discovery of the information on which OFCCP relies as the factual basis for its allegations.

In addition, the interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP rely on some kind of unclean hands defense for refusing to respond. First, there is no such thing. See, e.g., *Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 85836 (a party may not refuse to provide discovery based on claims that opposing party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts support the claim. Third, if there is information that OFCCP does not possess, it should so state. And finally, in this regard, to the extent that something will be the subject of expert testimony, OFCCP is



Norman E. Garcia  
July 5, 2017  
Page 24

still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.

With regard to the "all facts" objection, Oracle is willing to compromise and define "all facts" to mean all material facts.

With regard to the response itself, if documents are referenced, the documents must be identified precisely. OFCCP does not do this. As an example, in the paragraph beginning "Subject to . . .," the response refers to documents "including, but not limited to . . ." If the OFCCP is going to rely on documents, it must identify them with specificity, and identify them such that Oracle would know where in a document the information can be found. Fed. R. Civ. P. 33(d)(1); *see also, e.g., Palmdale3D, LLC v. Calamos*, 2015 U.S. LEXIS 187818, \* 3 (C.D. Cal. June 24, 2015), *Reinsdorf v. Skechers, U.S.A., Inc.*, 2012 U.S. Dist. LEXIS 195216, \*8-9 (C.D. Cal. May 11, 2012). Because OFCCP indicates that those documents have been produced, it should identify the bates stamp number(s) where the information can be located.

The same is true of the documents identified by names. For example, OFCCP references a hiring database. It cannot be assumed that Oracle and OFCCP use the same nomenclature. As the data and other documents referenced have presumably been produced, there should be an attendant bates stamp number. Reference to that will ensure a lack of misunderstanding and confusion.

In addition, it is clear that OFCCP has not answered this interrogatory fully in other respects. For example, OFCCP claims to rely on "evidence gathered" without specification as to what that evidence is. Oracle is entitled to know.

Finally, OFCCP incorporates by reference its response to Interrogatory No. 17. Such a reference is improper. Each interrogatory response should stand on its own. *Former S'holders of Cardiospectra, Inc. v. Volcano Corp.*, 2013 U.S. Dist. LEXIS 144136, \*7-8 (N.D. Cal. Oct. 4, 2013).

#### ***Interrogatory No. 21***

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

The interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP rely on some kind of unclean hands defense for refusing to respond. First, there is no such thing. *See, e.g., Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 85636 (a party may not refuse to provide discovery based on claims that opposing party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts



Norman E. Garcia

July 5, 2017

Page 25

support the claim. Third, if there is information that OFCCP does not possess, it should so state. And finally, in this regard, to the extent that something will be the subject of expert testimony, OFCCP is still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.

The objection that there is reference to two paragraphs of the Amended Complaint is without merit. Both paragraphs use the term "refused to produce." Oracle is seeking information as to the refusals to produce referenced in both paragraphs.

Concerning the objections as to the other terms used, Oracle is seeking information regarding what it is OFCCP contends Oracle did not provide it. Oracle cannot detail the level of description of the records at this point because it does not know what it is OFCCP contends was not produced. Perhaps the description OFCCP provides will be sufficient, but that cannot be known in the abstract. As to the statement that the parties have different definitions of what constitutes "refusal to produce," that may be. But the interrogatory seeks what it is that OFCCP says Oracle "refused to produce." And what is meant by "reflecting the refusal," is what OFCCP believes constituted the refusal. So, if OFCCP contends that what was meant was only communications that used the word "refusal," that is fine. If it is more than that, OFCCP should so indicate. Finally, if there is some artificial constraint in the definition of communication, OFCCP is at liberty to say as much and explain.

With regard to the "all facts" objection, Oracle is willing to compromise and define "all facts" to mean all material facts.

OFCCP is not relieved of its burden to respond by claiming that OFCCP would need to interview thousands of Oracle employees. Likewise, the objection that the interrogatory calls for speculation until such time as Oracle makes everyone available to OFCCP is not tenable. OFCCP is required to make reasonable efforts to respond to an interrogatory. See, e.g., *Haney v. Saldana*, 2010 U.S. Dist. LEXIS 93447, \*9 (E.D. Cal. Aug. 24, 2010). While the parties may ultimately disagree on what is reasonable, this objection does not excuse OFCCP from responding to this interrogatory.

Finally, with regard to objections, the interrogatory is a single interrogatory. It bears on a single subject and the items after the word "including" simply define the facts sought. "Subparts asking for facts, documents, and witnesses relating to a primary contention or allegation are logically or factually related, and thus should be construed as subsumed in the primary question." *Synopsys, Inc. v. ATopTech, Inc.*, 2016 WL 6782028, at, \*5 (N.D. Cal. Nov. 16, 2016).

As for the substantive response, the response is inadequate. First, the interrogatory does not answer when information was requested, who refused to produce the information or the communication reflecting the refusal. Second, it actually does not identify the records or information refused, except in some instances in general terms. For example, OFCCP claims that "some fields of information" were not





Norman E. Garcia  
July 5, 2017  
Page 26

provided without specifying what fields those were. OFCCP claims that Oracle refused to produce "most of the various personnel action requested" and a "significant amount of application material requested." That information does not respond to the interrogatory.

Finally, if documents are referenced, the documents must be identified precisely. OFCCP does not do this. As an example, in the paragraph beginning "Subject to . . ." the response refers to documents "including, but not limited to: . . ." If the OFCCP is going to rely on documents, it must identify them with specificity, and identify them such that Oracle would know where in a document the information can be found. Fed. R. Civ. P. 33(d)(1); see also, e.g., *Palmdale3D, LLC v. Calamos*, 2015 U.S. LEXIS 187818, \*3 (C.D. Cal. June 24, 2015), *Reinsdorf v. Skëchers, U.S.A., Inc.*, 2012 U.S. Dist. LEXIS 195218, \*8-9 (C.D. Cal. May 11, 2012). Because OFCCP indicates that those documents have been produced, it should identify the bates stamp number(s) where the information can be located.

#### *Interrogatory No. 22*

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

Interrogatories of this nature are routine. Oracle seeks the name and last known contact information of each person with personal knowledge of the facts alleged in Paragraphs 12 and 13 of the Amended Complaint and what facts OFCCP understands the person to have personal knowledge of. Such requests have withstood challenge. See, e.g., *King v. Wadkins*, 2017 U.S. Dist. LEXIS 95963, \*8 (E.D. Cal. June 21, 2017); *Silba v. AvalonBay Communities*, 2015 U.S. Dist. LEXIS 180517, \*19 (C.D. Cal. Oct. 2015); *Montgomery v. Wal-Mart Stores, Inc.*, 2015 U.S. Dist. LEXIS 188010, \*11-12 (S.D. Cal. July 2015).

For last known contact information there is no need whatsoever to interview thousands or indeed any employee or other individuals. If individuals identified by you in response to our discovery requests are current employees you need only state the name of the individual and whether you believe he/she is a current employee; if he/she is a former employee or a third party, you need only provide the name and location/employer and any business contact information you have; and if individuals you identify are known by OFCCP to be represented by counsel, provide the name of the individual and the name and contact information of their counsel. With regard to government employees (including former government employees), provided that OFCCP will agree that they can be contacted through the Office of the Solicitor, Oracle does not require contact information.

With regard to the "all facts" objection, Oracle is willing to compromise and define "all facts" to mean all material facts.



Norman E. Garcia

July 5, 2017

Page 27

OFCCP is not relieved of its burden to respond by claiming that OFCCP would need to interview thousands of Oracle employees. Likewise, the objection that the interrogatory calls for speculation until such time as Oracle makes everyone available to OFCCP is not tenable. OFCCP is required to make reasonable efforts to respond to an interrogatory. See, e.g., *Haney v. Saldana*, 2010 U.S. Dist. LEXIS 93447, \*9 (E.D. Cal. Aug. 24, 2010). While the parties may ultimately disagree on what is reasonable, this objection does not excuse OFCCP from responding to this interrogatory.

The interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP rely on some kind of unclean hands defense for refusing to respond. First, there is no such thing. See, e.g., *Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 85636 (a party may not refuse to provide discovery based on claims that opposing party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts support the claim. Third, if there is information that OFCCP does not possess, it should so state. And finally, in this regard, to the extent that something will be the subject of expert testimony, OFCCP is still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.

Finally, with regard to objections, the interrogatory is a single interrogatory. It bears on a single subject and the items after the word "including" simply define the facts sought. "Subparts asking for facts, documents, and witnesses relating to a primary contention or allegation are logically or factually related, and thus should be construed as subsumed in the primary question." *Synopsys, Inc. v. ATapTech, Inc.*, 2016 WL 6782028, \*5 (N.D. Cal. Nov. 16, 2016). Also, Courts have counted as one interrogatory those that request the names of persons, including the nature of the information possessed by the persons identified. See, e.g., *Johnson v. Cate*, 2014 U.S. Dist. LEXIS 119864, \*22 (E.D. Cal. Aug. 27, 2014). Moreover, OFCCP is wrong in its view of what constitutes a single interrogatory as set forth above. It should respond to this interrogatory.

#### *Interrogatory No. 23*

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

The interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP rely on some kind of unclean hands defense for refusing to respond. First, there is no such thing. See, e.g., *Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 85636 (a party may not refuse to provide discovery based on claims that opposing party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts support the claim. Third, if there is information that OFCCP does not possess, it should so state. And



Norman E. Garcia

July 5, 2017

Page 28

finally, in this regard, to the extent that something will be the subject of expert testimony, OFCCP is still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.

Concerning the objections to the terms used, OFCCP contends that Oracle failed to produce materials because it did not conduct underlying reviews and analyses. Oracle wants to know what OFCCP says that is. Oracle cannot detail the level of description of the records, reviews or analyses at this point because it does not know what it is OFCCP contends was not produced. Perhaps the description OFCCP provides will be sufficient, but that cannot be known in the abstract. What is meant by "reflecting the refusal," is what OFCCP believes constituted the refusal. So, if OFCCP contends that what was meant was only communications that used the word "refusal," that is fine. If it is more than that, OFCCP should so indicate. Finally, if there is some artificial constraint in the definition of communication, OFCCP is at liberty to say as much and explain.

With regard to the "all facts" objection, Oracle is willing to compromise and define "all facts" to mean all material facts.

OFCCP is not relieved of its burden to respond by claiming that OFCCP would need to interview thousands of Oracle employees. Likewise, the objection that the interrogatory calls for speculation until such time as Oracle makes everyone available to OFCCP is not tenable. OFCCP is required to make reasonable efforts to respond to an interrogatory. See, e.g., *Haney v. Saldana*, 2010 U.S. Dist. LEXIS 93447, \*9 (E.D. Cal. Aug. 24, 2010). While the parties may ultimately disagree on what is reasonable, this objection does not excuse OFCCP from responding to this interrogatory.

Finally, with regard to objections, OFCCP is wrong in its view of what constitutes a single interrogatory as set forth above. It should respond to this interrogatory.

#### ***Interrogatory No. 24***

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

We believe the objections are not well-taken. The interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP rely on some kind of unclean hands defense for refusing to respond or Oracle's own discovery positions. First, there is no such thing. See, e.g., *Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 85636 (a party may not refuse to provide discovery based on claims that opposing party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts support the claim. Third, if there is information that OFCCP does not possess, it should so state. And finally, in this regard, to the



Norman E. Garcia  
July 5, 2017  
Page 29

extent that something will be the subject of expert testimony, OFCCP is still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.

Additionally, the OFCCP's objections indicate that it has anecdotal evidence of unlawful discrimination. And its response to Interrogatory No. 17 admits that. The fact that there might be "further" evidence does not excuse the obligation to provide what the OFCCP has at this point.

With regard to the objection to the phrase "describe in detail" and to the term "anecdotal evidence," Oracle refers OFCCP to its response to Interrogatory No. 17 in which it states that it has anecdotal evidence of discrimination. Please tell Oracle what that is. Moreover, please respond by providing the facts that constitute whatever OFCCP deems to be anecdotal evidence.

As indicated above, the way in which OFCCP has counted the interrogatories is erroneous. OFCCP should respond to this interrogatory.

#### *Interrogatory No. 25*

To the extent that this interrogatory response repeats objections set forth in the general objections, Oracle incorporates what is set forth above with regard to the general objections.

We believe the objections are not well-taken. The interrogatories are not premature as OFCCP has filed a Complaint and an Amended Complaint following an extensive investigation. Nor can OFCCP rely on some kind of unclean hands defense for refusing to respond or Oracle's own discovery positions. First, there is no such thing. See, e.g., *Lindell v. Synthes USA*, 2013 U.S. Dist. LEXIS 85636 (a party may not refuse to provide discovery based on claims that opposing party failed to provide discovery). Second, OFCCP has made claims and Oracle is entitled to know what facts support the claim. Third, if there is information that OFCCP does not possess, it should so state. And finally, in this regard, to the extent that something will be the subject of expert testimony, OFCCP is still required to provide facts that underlie an allegation, whether or not the facts will be relied on by an expert.

As for the burdensome objections, either OFCCP contends that the discrimination resulted from disparate impact or not. If there is a disparate impact claim, OFCCP knows that it can be the result of a policy, practice, procedure or test. Oracle is asking whether there is a disparate impact allegation and if so, whether it results from a policy, practice, procedure or test. How such a thing can or should be described cannot be detailed in the abstract. So, until OFCCP provides some response, Oracle could not guess whether the description provided is sufficient. Finally, in this context, "operate" simply means what policy, practice, procedure or test does OFCCP contend caused a disparate impact.



Norman E. García

July 5, 2017

Page 30

As indicated above, the way in which OFCCP has counted the interrogatories is erroneous. OFCCP should respond to this interrogatory.

Please let us know by July 11, 2017, if OFCCP will be amending its responses to interrogatories in accordance with this letter and the authorities cited herein. Alternatively, if a meet and confer telephone call is necessary, please let me know that by July 11, 2017 so that we can meet and confer on July 12, 13 or 14, 2017.

Very truly yours,



Warrington Parker



August 2, 2017

VIA E-MAIL

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Re: *OFCCP v. Oracle, Inc. et al.*, OALJ Case No. 2017-OFC-00006  
Meet and Confer Letter Regarding Interrogatories

Dear Mr. Garcia:

I write to follow up on my meet and confer letter July 5, 2017, and our meet and confer discussions on July 28, July 31 and August 1. Oracle incorporates all pertinent discussions in its March 27, 2017 letter and its July 5, 2017 letter. I understand that during our meet and confer discussions you referred to OFCCP's meet and confer letter dated April 18, 2017.

**I. OFCCP SHOULD WITHDRAW ITS GENERAL OBJECTIONS**

Oracle again reiterates its request that OFCCP withdraw or clarify these general objections which lack merit. "The grounds for objecting to an interrogatory must be stated with specificity." Fed. R. Civ. P. 33(b)(4); *M2 Software, Inc. v. M2 Commc'ns, L.L.C.*, 217 F.R.D. 499, 501 (C.D. Cal. 2003) ("The plaintiff's General Objections are not sufficient to raise any substantial, meaningful or enforceable objections to any particular discovery request."); *Chubb Integrated Sys. Ltd. v. Nat'l Bank of Washington*, 103 F.R.D. 52, 58 (D.D.C. 1984) ("General objections are not useful to the court ruling on a discovery motion. Nor does a general objection fulfill plaintiff's burden to explain its objections."); *Ramirez v. Cty. of Los Angeles*, 231 F.R.D. 407, 409 (C.D. Cal. 2005) (general objection does not fulfill the objecting party's burden to explain its objections).

**A. OFCCP should withdraw General Objection No. 1. as Oracle's contention  
interrogatories are appropriate at this stage of discovery**

Oracle maintains its position in its March 27, 2017, and July 5, 2017 letters that contention interrogatories are proper at this stage in litigation and that the OFCCP's cited cases are distinguishable on their facts. In particular, because OFCCP has investigated Oracle for over a year and a half, the rationale of the cases cited by OFCCP does not apply here.

In any case, OFCCP has provided responses to certain of the interrogatories. As reflected in Oracle's meet and confer letters and as stated during the telephonic meet and confers, Oracle does not believe those responses are sufficient.



Norman E. Garcia

August 2, 2017

Page 2

However, given that OFCCP has responded, Oracle again requests that OFCCP confirm whether OFCCP is refusing to provide information and facts presently known to OFCCP on the basis of this objection. See *Gradziitsky v Am. Honda Motor Co.*, 2017 WL 2616917, 2017 U.S. Dist. Lexis 92150 (C.D. Cal. June 13, 2017).

Finally, while Oracle has agreed that this general objection need not be repeated in response to each interrogatory, Oracle does insist that OFCCP remove its general objections and assert them as applicable to an interrogatory. *Meggitt (Orange Cty.), Inc. v. Nle*, 2015 WL 12743695, at \*1 (C.D. Cal. Feb. 17, 2015).

**B. OFCCP should withdraw General Objection No. 2 regarding privileges as OFCCP has waived governmental privileges by failing to provide an affidavit from the head of the agency with its responses**

During our meet and confer conversations, you asked whether Oracle would continue to assert its argument that OFCCP has waived government privileges by failing to provide an affidavit at the time of serving its responses. Oracle is. See *Chism v. Cty. of San Bernardino*, 159 F.R.D. 531, 533 (C.D. Cal. 1994) ("A party seeking to claim the official information privilege must submit, *at the time it files its response to a request for production*, a declaration, under oath, from the head of the department having control over the matter . . . ." (emphasis added); *Torbert v. Gore*, 2016 WL 1394268, at \*5 (S.D. Cal. Apr. 8, 2016) ("To make such a showing, a party must submit, at the time it files and serves its response to the discovery request, a declaration or affidavit, under oath or subject to the penalty of perjury, from the head of the department which has control over the matter." (quoting *Miller v. Pancucci*, 141 F.R.D. 292, 300 (C.D. Cal. 1992)); see also *Hampton v. City of San Diego*, 147 F.R.D. 227, 231 (S.D. Cal. 1993) ("counsel shall also submit the privilege log and the affidavit of the agency official filed at the time of the initial objection").

**C. OFCCP should withdraw General Objection No. 3 regarding documents or information "previously produced or not" within OFCCP's custody, possession or control**

OFCCP has asserted a general objection to interrogatories to the extent that they seek documents or information "previously produced or not" within OFCCP's custody, possession, or control. During our meet and confer discussion, OFCCP indicated that it was not required to respond fully to interrogatories based on this objection because it Rule 33 only requires that "[e]ach interrogatory must, *to the extent it is not objected to*, be answered separately and fully in writing under oath." (emphasis added).

OFCCP's reading of Rule 33 is too narrow and an objection by itself does not absolve a party's duty to respond as best as she can. *Marti v. Baires*, 2012 WL 2029720, at \*3 (E.D. Cal. June 5, 2012) ("[O]bjecting that a ROG calls for information which may fall outside that known by or available to the responding party is indefensible. Defendant is obligated to make a reasonable effort to respond, and he



Norman E. Garcia  
August 2, 2017  
Page 3

may not deflect a ROG because he might not be able to answer it."). Furthermore, an objection that the information has already been "produced" is not a valid objection. *Amari Co. v. Burgess*, 2009 WL 1292860, at \*8 (N.D. Ill. May 7, 2009) ("Claiming that information already has been divulged does not answer the interrogatory.").

D. OFCCP should withdraw or clarify General Objection No. 4 to challenge the relevance of any of Oracle's interrogatories

OFCCP's General Objection No. 4 purports to object to interrogatories to the extent that they seek information that is irrelevant or beyond the permissible scope of discovery. During our meet and confer discussions, I again raised with OFCCP the issue that it's not clear which interrogatories this applies to or in what way the interrogatories seek irrelevant or information beyond the permissible scope of discovery.

E. OFCCP should withdraw General Objection No. 5 as Oracle's definitions and instructions are clear

OFCCP's General Objection No. 5 objects to Oracle's definitions and instructions. During our meet and confer discussions, OFCCP asked Oracle why it capitalized some words in its interrogatories using the words "any" and "person" as examples. As a threshold matter, OFCCP's objections should be specific to the interrogatory to which it applies.

Moreover, OFCCP's request for clarification is disingenuous.

However, in effort to meet and confer, Oracle is willing to clarify as follows:

- The word "any" as it appears in Interrogatories No. 24 and 25 and in the Definitions and Instructions is replaced with the capitalized word "ANY"
- The word "person" as it appears in Interrogatory No. 19 is intentionally not capitalized and is to be construed using the everyday meaning of person
- The word "you" in the Definitions and Instructions is replaced with the capitalized word "YOU"
- The word "Oracle" as it appears in Interrogatory No. 20, 21, 23 is replaced with the capitalized word "ORACLE"

During our meet and confer discussions, OFCCP objected to the term "COMPLIANCE REVIEW" as ambiguous. Oracle defined "COMPLIANCE REVIEW" as "OFCCP's compliance evaluation of Oracle's Redwood Shores location and referenced in OFCCP's Amended Complaint, *including the time period* from the date of determination that Oracle Redwood Shores was selected for a compliance evaluation until March 11, 2016." (emphasis added). OFCCP sought clarification on the relevant time period.